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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

NAVAJO NATION HUMAN RIGHTS :
COMMISSION; PEGGY PHILLIPS; MARK :
MARYBOY; WILFRED JONES; TERRY :
WHITEHAT; BETTY BILLIE FARLEY; : **SHORT FORM DISCOVERY**
WILLIE SKOW; and MABEL SKOW, : **MOTION TO QUASH SUBPOENA**

Plaintiffs, : Case No. 2:16-cv-00154 JNP

v. : Judge Jill N. Parrish

SAN JUAN COUNTY; JOHN DAVID
NIELSON, in his official capacity as San Juan
County Clerk; and PHIL LYMAN, BRUCE
ADAMS, and REBECCA BENALLY, in their
official capacities as San Juan County
Commissioners,

Magistrate Judge Brooke C. Wells

EXPEDITED TREATMENT
REQUESTED

Defendants.

By this *Motion*, Defendants seek an *Order* quashing the Subpoena that Plaintiffs have apparently served upon Edward Tapaha who, (1) until his recent retirement was San Juan County's

liaison with the Navajo Nation, and (2) who defense counsel have represented both in this case (as the county's 30(b)(6) designee) as well as in a related lawsuit involving the Navajo Nation.¹ For several weeks, the parties have been trying to schedule the depositions of Mr. Tapaha and other San Juan County employees who Plaintiffs have asked to depose. Towards this end, the parties are attempting to schedule these depositions during the later part of January 2018 because either counsel or the intended deponents are not available for a deposition until then. Yet, despite knowing that defense counsel could attend a deposition during the week of January 8, 2018, and without prior notice to defense counsel in the form of a *Notice of Deposition*, opposing counsel Leah Farrell e-mailed to the undersigned counsel just before the close of business on Friday, January 5, 2018, a *Subpoena* that Plaintiffs are in the process of serving upon serve on Mr. Tapaha.

That *Subpoena* requires Mr. Tapaha to appear for a deposition in San Juan County, Utah in 7-days, “**at 10AM on 1/12/2017**,” to testify in a deposition and to bring with him to that deposition “all documents related to translating ballots and other election materials and outreach to Navajo voters, including but not limited to emails, calendars, and notes.”² Immediately upon receipt of the *Subpoena*, the undersigned counsel e-mailed opposing counsel, Ms. Farrell, reminding her that defense counsel could not attend that deposition.³ I followed that e-mail with a telephone call to Ms. Farrell during

¹ See Dkt. 107, Exhibit 9 and 12.

² See *Subpoena*, Exhibit 1(emphasis added).

³ See Farrell E-Mail, Exhibit 2.

which Ms. Farrell informed me that because Mr. Tapaha was a third-party, plaintiffs did not need to clear the date and time with the defendants.

CERTIFICATION

I, Britton Butterfield, certify that on the afternoon of January 5, 2018, I conferred with Leah Farrell, esq. by e-mail and telephone, in a reasonable effort to resolve this discovery dispute, but was unsuccessful.

ARGUMENT

The *Subpoena* should be quashed because: (1) defense counsel was not given reasonable written notice pursuant to *Fed. R.Civ. P.* 30(b)(1);⁴ (2) the *Local Rules* require that a copy of *DUCivR* 37.1(a)(9) be attached to the *Subpoena*, which Plaintiffs did not do thereby requiring that it be quashed;⁵ (3) one week is not reasonable time to comply; (4) on information and belief Mr. Tapaha lives more than 100 miles from the deposition location and (5) the deposition is noticed for 2017.

DATED this 6th day of January, 2018.

SUITTER AXLAND, PLLC

/s/ Britton R. Butterfield

Jesse C. Trentadue

Carl F. Huefner

Britton R. Butterfield

⁴ *C&F Packing CO., Inc. v. Doskocil Companies, Inc.*, 126 F.R.D. 662, 679-80(N.D. Ill. 1989).

⁵ See *DUCivR* 37.1(a)(9); *In re Vanbrocklin*, 2017 WL 988812 (N.D. Ga. Bkrtcy); *Selee Corp. v. McDanel Advanced Ceramic Techs., LLC*, , 2016 WL 4546446, *4 (W.D. N.C.).

Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2018, I electronically filed **SHORT FORM DISCOVERY MOTION TO QUASH SUBPOENA** with the U.S. District Court for the District of Utah. Notice will automatically be electronically mailed to the following individual(s) who are registered with the U.S. District Court CM/ECF System:

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